

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK EDWIN SIKORSKI,

Defendant-Appellant.

UNPUBLISHED

April 25, 2017

No. 334763

Macomb Circuit Court

LC No. 2014-004451-FH

Before: SAWYER, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

Defendant appeals¹ the trial court's order that granted the prosecution's motion to exclude evidence and denied defendant's motion in limine to admit photographs. Defendant was charged with fourth-degree criminal sexual conduct (CSC), MCL 750.520e(1)(b), and the trial commenced on January 14, 2016. The trial ended in a hung jury, and a new trial was scheduled. After the trial court rendered its decision on two evidentiary motions, we granted an interlocutory appeal and for the reasons provided below, we affirm in part and reverse in part.

I. EVIDENCE OF ALLEGED VICTIM'S INTENTION TO FILE A CIVIL ACTION

Defendant asserts that the trial court erred when it granted the prosecution's motion to exclude evidence that the alleged victim, RB, intended to file a civil lawsuit against defendant. According to defendant, he was denied his right of confrontation when the trial court limited his ability to cross-examine RB about her possible civil lawsuit. Defendant maintains that RB's sexual assault allegations stemmed from her motivation to collect money damages in a civil lawsuit. At the first trial, the trial court allowed defense counsel to cross-examine RB about her financial difficulties, her understanding that she could bring a civil lawsuit, and her intentions of bringing such a lawsuit. Moreover, defense counsel questioned RB about text message conversations with her friend and attorney, David Jarvis, regarding the possibility of extorting money through sexual assault allegations. Defendant says that, in the upcoming trial, he should be allowed to cross-examine RB on this subject. We agree.

¹ We granted leave to appeal in *People v Sikorski*, unpublished order of the Court of Appeals, entered October 21, 2016 (Docket No. 334763).

This Court reviews the trial court's decision whether to admit evidence for an abuse of discretion. *People v Duncan*, 494 Mich 713, 722; 835 NW2d 399 (2013). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *Id.* at 722-723. If the admission of evidence involves a preliminary question of law, this Court reviews the issue de novo. *Id.* at 723, citing *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). The constitutional question of whether a defendant was denied the constitutional right to confront a witness is also reviewed de novo. *People v Benton*, 294 Mich App 191, 195; 817 NW2d 599 (2011).

The Confrontation Clause of the Sixth Amendment, US Const, Am VI, "guarantees criminal defendants a meaningful opportunity to present a complete defense." *People v King*, 297 Mich App 465, 473; 824 NW2d 258 (2012) (quotation marks and citation omitted). Additionally, the Michigan Constitution affords a criminal defendant the right to be confronted with the witnesses against him. Const 1963, art 1, § 20; *People v Nunley*, 491 Mich 686, 697; 821 NW2d 642 (2012). "A primary interest secured by the Confrontation Clause is the right of cross-examination." *People v Gaines*, 306 Mich App 289, 315; 856 NW2d 222 (2014). This Court has held that "[t]he right of cross-examination does not include a right to cross-examine on irrelevant issues." *Id.* at 316 (quotation marks and citation omitted). With that said, the proper scope of cross-examination lies within the sound discretion of the trial court. *People v Morton*, 213 Mich App 331, 334; 539 NW2d 771 (1995).

Notwithstanding a trial court's considerable discretion, a witness' bias, and especially the victim's bias in bringing charges, is always relevant, and a defendant is entitled to have the jury consider any fact that may have influenced the charging party's testimony. *People v McGhee*, 268 Mich App 600, 637; 709 NW2d 595 (2005). "In particular, whether a witness has filed or is contemplating filing a civil lawsuit, the prospects for which may be affected by the outcome of a criminal action, is always relevant to a witness' credibility." *Morton*, 213 Mich App at 334-335. To deny such cross-examination constitutes error that may require reversal. *Id.* at 335.

Defendant will be denied his right to confront his accuser if he is prevented from cross-examining RB about her intent to bring a civil lawsuit against defendant. This Court has long held that criminal defendants may cross-examine witnesses about potential civil lawsuits in order to discredit the witness by exposing bias or an ulterior motive. See *id.* at 334-335; *People v Adamski*, 198 Mich App 133, 141-142; 497 NW2d 546 (1993); *People v Grisham*, 125 Mich App 280, 285; 335 NW2d 680 (1983). This is especially important as it pertains to the victim who brought the charges in issue. Therefore, the trial court clearly erred when it excluded all evidence of RB's possible desire to bring a civil lawsuit against defendant.²

² We reject the prosecution's view that this issue is irrelevant because the statute of limitations potentially has already run on all of RB's possible claims. Merely because the statute of limitations may have lapsed at the time of trial, it does not follow that the alleged victim could not have contemplated a civil suit at the time she made her allegations. If such motivations were behind her accusations, this would be relevant for the jury to consider. In other words, the fact

II. ADMISSIBILITY OF FACEBOOK PHOTOS

Defendant also argues that the trial court erred when it denied his motion in limine and refused to admit three photographs RB posted to her Facebook page. Defendant claims that the failure to admit these photographs constitutes a deprivation of the right to present a defense. We disagree.

“This Court reviews de novo both constitutional claims and preliminary questions of law regarding the admissibility of evidence.” *People v Duenaz*, 306 Mich App 85, 90; 854 NW2d 531 (2014). “We review the trial court’s ultimate decision regarding admissibility of evidence for an abuse of discretion.” *Id.* “A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes.” *Duncan*, 494 Mich at 722-723.

“A criminal defendant has a due process right to present a defense under the state and federal constitutions.” *People v Solloway*, ___ Mich App ___, ___ NW2d ___ (2016) (Docket No. 324559); slip op, p 12. “Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.” *People v Unger*, 278 Mich App 210, 249; 749 NW2d 272 (2008) (quotation marks and citation omitted).

However, this right “extends only to relevant and admissible evidence.” *Solloway*, ___ Mich App at ___, slip op at 12 (quotation marks and citation omitted). “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” MRE 401. Evidence can be relevant if offered to address a victim’s truthfulness, *People v Mann*, 288 Mich App 114, 118; 792 NW2d 53 (2010), or a victim’s credibility, see *People v Watkins*, 491 Mich 450, 492; 818 NW2d 296 (2012).

Defendant moved to have the court admit three different photographs of RB that she posted to her Facebook page. The photos showed RB in various poses and attire, some of which some could be viewed as glamorous, alluring, and/or provocative. On appeal, defendant asserts that the photos are relevant, and therefore admissible, because they prove that RB “drastically changed her appearance for purposes of trial.”³ The obvious, and improper purpose is to suggest that RB is a licentious woman who was likely to provoke or consent to defendant’s sexual advances. For this reason, the trial court correctly denied defendant’s motion and we affirm this ruling.

that RB may not now be able to successfully bring civil claims against defendant, does not diminish the likelihood that the initial accusations were made in contemplation of litigation.

³ At the trial court, defendant argued that RB specifically “drastically changed her appearance for the purpose of misleading the jury” and that her change in appearance constituted “a fraud upon the court.”

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Michael J. Riordan